



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,301	07/27/2001	Glenn E. Riggs	6065/1	5817
29858	7590	12/04/2003		
BROWN, RAYSMAN, MILLSTEIN, FELDER & STEINER LLP 900 THIRD AVENUE NEW YORK, NY 10022				
EXAMINER MEINECKE DIAZ, SUSANNA M				
ART UNIT 3623				
PAPER NUMBER				

DATE MAILED: 12/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/915,301

Applicant(s)

RIGGS ET AL.

Examiner

Susanna M. Diaz

Art Unit

3623

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 30 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see attached sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-45.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

*Susanna Diaz*  
*Susanna Diaz*  
*Primary Examiner*  
*A. U. 3623*

***Attachment to Advisory Action (Paper No. 20)***

1. Applicant's arguments are found to be non-persuasive. "Applicant respectfully submits that the previous Examiner did not take Official Notice and did not cite the article ["Take It To The Limit"] 'to support her taking of Official Notice.' Applicant further submits that, in view of the newly cited art, it is improper to make the Office Action final and hereby request withdrawal of finality." (Page 1 of Applicant's Request for Reconsideration) The Examiner respectfully disagrees. As stated in the previous Advisory Action (Paper No. 17), "The previous Examiner of record took Official Notice that 'it is old and well known in the art of transport and shipping to have an electronic abstract (or written contract or proposals) to review when deciding on a carrier and to select a carrier based on the abstract' (pages 17-18 of paper no. 13)." While the previous Examiner did not explicitly preface this assertion with the phrase "Official Notice," she clearly submitted that the use of electronic abstracts is old and well-known in the art of transport and shipping. As per MPEP § 2144.03(A), Official Notice is an assertion that certain facts are well-known and of such common knowledge that they are capable of being supported instantly and without question. Therefore, the previous Examiner's assertion that the use of electronic abstracts is old and well-known in the art of transport and shipping is effectively a statement of Official Notice, as defined by MPEP § 2144.03(A).

Furthermore, as to Applicant's request for withdrawal of finality based on the "newly cited art," Examiner respectfully refers Applicant to MPEP § 2144.03(D), which states, "If an Examiner adds a reference in the next Office action after applicant's

rebuttal, and the newly added reference is added only as directly corresponding evidence to support the prior common knowledge finding, and it does not result in a new issue or constitute a new ground of rejection, the Office action may be made final." In the remailed Final rejection (Paper No. 13), the previous Examiner cited the article "Take It To The Limit" to support her assertion of Official Notice, which had effectively been challenged previously by the Applicant on page 9 of the amendment filed April 15, 2003 (Paper No. 9) with the argument that an electronic abstract was "not addressed in the rejection." In the previous Advisory Action (Paper No. 17), the present Examiner merely clarified that the previous Examiner's statement that the article "Take It To The Limit" supports her assertion that "it is old and well known in the art for a supplier to receive the proposals from the shippers and select a carrier" (Page 22 of Paper No. 13) is also indicative of the fact that "Take It To The Limit" supports the assertion that electronic abstracts are old and well-known in the art since Merriam Webster's Collegiate Dictionary (10th ed.) defines an abstract as "a summary of points."

Paragraph 4 of "Take It To The Limit" discloses that shippers receive quotes from carriers in order to select the best carrier(s) and then the shippers can request more detailed proposals from these carriers. These quotes are understood to be less detailed than the proposals and therefore serve as an "abstract," i.e., summary of points, regarding carrier quote characteristics to be compared.

In conclusion, Applicant's arguments are non-persuasive. Not only is the art rejection of record maintained, but finality of the previous Office action is maintained as well.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susanna M. Diaz whose telephone number is (703) 305-1337. The examiner can normally be reached on Monday-Friday, 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703)308-1113.

Any response to this action should be mailed to:

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450**

or faxed to:

**(703)305-7687** [Official communications; including  
After Final communications labeled  
"Box AF"]

**(703)746-7048** [Informal/Draft communications, labeled  
"PROPOSED" or "DRAFT"]

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 22202, 7<sup>th</sup> floor receptionist.

*Susanna Diaz*  
Susanna M. Diaz  
Primary Examiner  
Art Unit 3623  
December 3, 2003